D.B. CRIMINAL REVISION PETITION NO.793/2004
(Anil Kumar Vs. State of Rajasthan & Ors.)

DATE OF ORDER : 11.07.2006

HON'BLE MR. JUSTICE N.N.MATHUR
HON'BLE MR. JUSTICE R.P.VYAS

Mr. H.R.Chawla for the petitioner.

By way of instant revision petition under Section 397/401 Cr.P.C., the complainant Anil Kumar has challenged the order dated 8.10.2003 passed by the learned Additional Sessions Judge (Fast Track) Anoopgarh, District Sri Ganganagar, acquitting the accused respondents - Shammi Bi and Kherdin of offence under Sections 148, 120-B, 302, 302/149 and 364 IPC. Eleven accused persons namely Yasin Khan, Binnu Khan, Kashmir Singh, Ratiram, Shammi Bi wife of Kherdin, Parmeshwar Ram @ Parmesh, Aamin Khan, Suban Khan, Abdul Gaffar Khan, Noor Mohd. and Kherdin were put to trial for forming an unlawful assembly and committing murder of Praveen Kumar, the brother of the petitioner in pursuance of the common object. The learned trial court after appreciation of the evidence on record, convicted Yasin Khan, Binnu Khan, Aamin Khan, Suban Khan, Abdul Gaffar and Noor Mohd. for offence under Sections 147, 302/149 IPC and sentenced to imprisonment for life. However, the learned Judge acquitted the accused Kashmir Singh, Ratiram, Parmeshwar Ram @ Parmesh, Kherdin and Shammi Bi of offence

under Sections 148, 302 in alternate under Sections 302/149, 120-B and 364 IPC. The complainant, out of the acquitted accused persons, have only challenged the acquittal of Shammi Bi and Kherdin.

We have perused the judgment of the learned trial court. It appears that no charge sheet was filed initially against Kherdin but on a petition filed by the complainant, cognizance was also taken against him. The entire prosecution case rests upon the testimony of four eye witnesses, out of which PW-1 Ratan Singh and PW-2 Birbal Ram have not supported the prosecution case, as such, they were declared hostile. The trial court held that PW-2 Birbal Ram did not witness the occurrence. As regards PW-3 Anil Kumar, it was found that on being confronted with his police statement Ex.D-5, it was admitted that he did not disclose the name of Kherdin. The learned Judge has also accepted the plea of alibi taken by Kherdin. It was ultimately established that at the relevant time, Kherdin was in the court of Civil Judge (Junior Division) & Judicial Magistrate, First Class, Anoopgarh. As far as other accused respondent Shammi Bi is concerned, she is an old lady of 70 years. On appreciation of the entire evidence, it was found that no role has been assigned to Shammi Bi.

Having considered the entire material, we are of the view that there is nothing on the basis of which it can be said that there is a case of re-trial.

In view of this, no interference is warranted by this Court in exercise of its revisional jurisdiction. The revision petition filed by the complainant stands dismissed without prejudice to the contentions of the accused persons who have been convicted.

(R.P.VYAS), J. **(N.N.MATHUR), J.**

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